

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.: 04-30070KPN

PETER K. FREI,	)
Plaintiff	)
	)
vs.	)
	)
TOWN OF HOLLAND, BOARD OF HEALTH,	)
HOLLAND CONSERVATION COMMISSION,	)
HOLLAND POLICE DEPARTMENT,	)
PLANNING BOARD, ZONING BOARD OF	)
APPEALS, Ronald Benoit, Debra Benveniste,	)
Sally Blais, Richard Blease, Harold E. Congdon,	)
Robert Dymon, Robert Ford, Kevin Gleason,	)
Benjamin Haller, William Hardy, Earl Johnson,	)
Helen Kreiger, Marilyn LaPlante, Joanne May,	)
Vincent J. McCaughey, Dora Metrelis,	)
Arthur A. Quinn, Brian Roche, John Stevens,	)
Defendants	)

**DEFENDANTS' OPPOSITION TO THE PLAINTIFF'S MOTION FOR DEFAULT**

NOW COME the defendants and move this Honorable Court to deny the plaintiff's Motion for Default. As reasons for this motion, the defendants state as follows.<sup>1</sup>

The plaintiff has asked this Court to allow his Motion for Default on the basis that the defendants have defied a court order and filed a dispositive motion under Fed. R. Civ. P. 12(b)(6) instead of an answer. As noted in note 1, *supra*, the defendants address the issue of filing a dispositive motion instead of an answer in a separate Motion and incorporate each those arguments herein by reference. In addition, the defendants state that because there will be no prejudice to the plaintiff as discovery has not yet begun in this matter and the delay in providing

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<sup>1</sup> The defendants also file today a Motion for Leave to Proceed on their Motion to Dismiss or, in the alternative, to file their Answer to the plaintiff's Amended Complaint and convert the Motion to Dismiss to one for Judgment on the Pleadings. In that motion, the defendants also advance their opposition to the Motion for Default, but have prepared and filed this Opposition to directly and separately address the Motion for Default.

the answer is only a matter of weeks from the Court's June 30, 2004 date, counsel asks this Court to deny the plaintiff's motion for default. *Luis C. Forteza e Hijos, Inc. v. Mills*, 534 F.2d 415, 419 (1st Cir. 1976), citing *Flaksa v. Little River Marine Const. Co.*, 389 F.2d 885 (5th Cir. 1968), cert. denied 392 U.S. 928 (U.S.Fl., 1968) (stating "default judgment is a...drastic sanction that should be employed only in an extreme situation"). The primary reason for a court's reluctance to default a party is the "policy of the law favoring the disposition of the case on their merits." *Richman v. General Motors Corp.*, 437 F.2d 196, 199 (1st Cir. 1971), citations omitted. Because there will be no prejudice to the plaintiff and because defendants' counsel in good faith, believing that filing a dispositive motion was acceptable to this Court, asks this Court to deny the plaintiff's motion for default.

#### CONCLUSION

WHEREFORE, based upon all the foregoing, the defendants respectfully request that the plaintiff's Motion for Default be denied.

THE DEFENDANTS,  
TOWN OF HOLLAND, ET AL

By /s/ Nancy Frankel Pelletier  
Nancy Frankel Pelletier, Esq.,  
BBO No.: 544402

By /s/ Dorothy Varon  
Dorothy Varon, Esq.,  
BBO No.: 629609  
Robinson Donovan, P.C.  
1500 Main Street, 16<sup>th</sup> Floor  
Springfield, MA 01115  
(413) 732-2301